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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/559,993	12/07/2005	Frank Loeffler	21468/100M559-US1	7981
7278	7590	05/01/2009	EXAMINER	
DARBY & DARBY P.C. P.O. BOX 770 Church Street Station New York, NY 10008-0770			WARE, DEBORAH K	
			ART UNIT	PAPER NUMBER
			1651	
			MAIL DATE	DELIVERY MODE
			05/01/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/559,993	Applicant(s) LOEFFLER, FRANK	
	Examiner DEBBIE K. WARE	Art Unit 1651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8 and 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8 and 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>1/16/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1, 3-8 and 16-20 are presented for examination on the merits.

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 16, 2009, has been entered.

Response to Amendment and Declaration

The Amendment and declaration filed **January 16, 2009**, have been received and entered. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action. The declaration was persuasive and the He et al reference has been removed.

Information Disclosure Statement

The information disclosure statements (IDSs) submitted on January 16, 2009, has been received. The submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statements are being considered by the examiner.

Claim Rejections - 35 USC § 102/103

a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3, 4, 5, 6, 7, 8, and 16-20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sorenson (2002/0020665), cited on previously enclosed PTO-892 Form.

Claims are drawn to Dehalococcoides isolate for remediating a substrate comprising a halogenated compound which includes dichloroethene (DCE), and cis-DCE, vinyl-halide (halide can be chloride or bromide).

Sorenson teaches Dehalococcoides isolate for remediating a substrate comprising a halogenated compound which includes dichloroethene (DCE), and cis-DCE, vinyl-halide, including vinyl-chloride. Note page 2, [0010], all lines and page 3,

[0025], all lines, and specifically lines 4-5, and line 6 from the bottom of page 3, [0025].

The abstract and page 3, [0024], line 2.

The claims are indential to the cited disclosures and are, therefore, considered to be anticipated by the teachings therein. However, in the alternative that there is some unidentified claim characteristic for which there would be some difference between the claims and the cited prior art, above, then such difference is considered to be so slight as to render the claims obvious in the alternative thereof. It would have been obvious to provide for a Dehalococcoides isolate for remediating a substrate comprising a halogenated compound which includes dichloroethene (DCE), and cis-DCE, vinyl-halide, including vinyl-chloride as shown and taught by the cited prior art. Each of the claimed features are disclosed by the cited prior art. The claims are rendered in the alternative prima facie obvious over the cited prior art.

Response to Arguments

Applicant's arguments filed January 16, 2009, have been fully considered but they are not persuasive. The argument that the referenced articles teach that Dehalococcoides ethenogenes can not use either trans-DCE or vinyl chloride as a metabolic electron acceptor is noted. However, Sorenson clearly teaches that in their experiments the two halogenated compounds are used as electron acceptors. Also the references referred to by Applicant's Representative came to this conclusion only because the trans-DCE and VC were not rapidly used by the cultures with strain 195 but this taken with the teachings of Sorenson does not exclude these two compounds as being usable by the microbe as an electron acceptor. Thus, each of the claim features

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are clearly disclosed, with the exception of vinyl bromide which is believed by the Examiner to be at least an obvious, if not anticipated, electron acceptor given that vinyl halides are disclosed so broadly by the cited reference. The arguments are not persuasive and the rejection is sustained.

All claims fail to be patentably distinguishable over the state of the art discussed above and cited on the **previously** enclosed PTO-892 Form. Therefore, the claims are properly rejected.

The remaining references listed on the enclosed PTO-1449 are cited to further show the state of the art.

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEBBIE K. WARE whose telephone number is (571)272-0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/DKW/
Deborah K. Ware
Examiner
Art Unit 1651

/David M. Naff/
Primary Examiner, Art Unit 1657